

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 25-40 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-26 of U.S. Patent No. 6474592. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed invention seems to be disclosed in U.S. Patent 6474592.

Claims 25-34 rejected under 35 U.S.C. 103(a) as being obvious over U.S. Patent no. 6474592.

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not an invention "by another"; (2) a showing of a date of invention for the claimed subject matter of the application which corresponds to subject matter disclosed but not claimed in the reference, prior to the effective U.S. filing date of the reference

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under 37 CFR 1.131; or (3) an oath or declaration under 37 CFR 1.130 stating that the application and reference are currently owned by the same party and that the inventor named in the application is the prior inventor under 35 U.S.C. 104, together with a terminal disclaimer in accordance with 37 CFR 1.321(c). For applications filed on or after November 29, 1999, this rejection might also be overcome by showing that the subject matter of the reference and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person. See MPEP § 706.02(l)(1) and § 706.02(l)(2). The claimed invention is met by the disclosure of U.S. patent no. 6474592.

The terminal disclaimer filed on 5/24/05 was disapproved.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 25-34 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

It is not understood what the significance of the term “impact assessment controller” mean or how it works. How is this different from the impact “verification unit 24/26”? Are there two completely different “impact units”? If so, how do they verify if the impact is correct? How do they communicate with each other? The box 100 showing the data processor 140,

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resource allocation unit 120 and controller 130 are general in nature and is inherent in computing units in this day and age.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 30 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 30, line 2, negotiating _resources is vague and indefinite. What is this?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 25-32 and 34, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Shnaps (US 6345784).

Schnaps discloses the method for impact assessment. Schnaps teaches that the impact assessment controller 40, 42 (see column 8 also) is connected to the platform electronic system. When the signal is received (via receiver) from the smart munition 10 on the platform with impact assessment unit, there is a computer system to process the information. The negotiation is for access to a human interface unit 50 or 42 (for visual information). The processing of

information for receiving and processing from an onboard guidance system of the smart munitions can be done with device 42. The regulating communication with the smart munitions uses a receiver is shown in figure 3. Claim 31, the negotiating access to the platform processing resources is the access to the VTR. Re claim 32, the negotiating access to the transmitter is disclosed in Schnap on column 8, last line. Re claim 34, the negotiating with a resource allocation controller on the platform is done with a computer system (shown in figure 3) that allows the received signal to be sent to parts 50, 42, and the data to be sent to the transmitter that is cited in column 8, last line.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 33 is rejected under 35 USC 103(a) as being unpatentable over Shnaps (US 6345784).

Although Schnap doesn't disclose the frequency between 2 gigahertz and 2.6 gigahertz, it would have been obvious to one skilled in the art at the time the invention was made to have used a frequency (such as 2 gigahertz to 2.6 gigahertz) that would optimize the performance of the transmitter/receiver for privacy/security. Plus, applicant has not provided any criticality to the range.

Claims 25-34, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Shnaps 6345784 in view of Astle et al 6396816.

Although the examiner believes that the negotiating resources are present in a computerized system (well known in this day and age) of Schnaps shown in figure 3, the examiner rejects the claims with the additional art of Astle et al to show that negotiating access is very well known. Astle et al teaches that resource allocations/negotiations are well known in this day and age. See figures 2 and 4 and the abstract.

It would have been obvious to one skilled in the art at the time the invention was made to have used a computerized resource allocation/negotiation systems in Shnaps as taught by Astle et al to better allocate resources.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tien Dinh whose telephone number is 571-272-6899. The examiner can normally be reached on 12-8.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Mansen can be reached on 571-272-6608. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Tien Dinh/
Primary Examiner, Art Unit 3644